



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,143	09/25/2001	James Hugh McLaughlin	C&E, JHM-1	1702

7590 08/29/2006

Robert J. Kelleher, Esq.  
Crabtree & Evelyn, Ltd.  
102 Peake Brook Road  
P>O> Box 167  
Woodstock, CT 06281-0167

EXAMINER

WANG, SHENGJUN

ART UNIT	PAPER NUMBER
----------	--------------

1617

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

09/964143

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
---------------------------------	-------------	---	---------------------

EXAMINER

ART UNIT

PAPER

20060822

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

The reply brief filed June 20, 2006 has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

The appellant has submitted Request for Admissions along with the Reply to the Examiner's Answer seeking a response to the same set of questions from several USPTO employees, including Shengjun Wang, Sreeni Padmanabhan, and Board members. The USPTO rules governing both examination of applications and appeals do not provide for such a submission.

Moreover, the USPTO and the Department of Commerce have promulgated regulations that govern requests for employee testimony, in accordance with the Supreme Court's holding in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). See 37 C.F.R. part 104; 15 C.F.R. part 15; see also Manual of Patent Examining Procedure (MPEP) Chapter 1700. Accordingly, the demand for testimony, including request for admissions, from USPTO employees must comply with the USPTO's regulations regarding such demands and are not made under the Federal Rules of Civil Procedure. See generally 37 CFR Part 104; *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

The Request for Admissions accompanying your Reply to the Examiner's Answer does not comply with 37 CFR Part 104, e.g., your demand does not include an affidavit setting forth the information required in 37 CFR § 104.22(c)(3) and the MPEP §1701 and was not properly served under 37 CFR § 104.22(c)(1).

Finally, the appellant stated that if a response to the Request for Admissions "is not timely, the matters set forth therein are deemed admitted." However, because your demand is improper, the USPTO will not provide a response.

As to the fee paid by appellant on September 21, 2004, it appears that applicant has overpaid the extension fee. Applicant may file request for refund.

**SHENGJUN WANG**  
**PRIMARY EXAMINER**Shengjun Wang  
Primary Examiner  
Art Unit: 1617